IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 26317 of 2007(G)

PETITIONER:

T.M.SYED, AGED 58 YEARS,
S/O. MOHAMMED KUTTY MUSALIYAR,
THEKKUMKARA MELETHIL HOUSE,
P.O.KIZHAYOOR, VIA. PATTAMBI,
OTTAPPALAM TALUK, PALAKKAD.

BY ADV. SRI.P.K.IBRAHIM
SMT.K.P.AMBIKA
SRI.THOMSTINE K.AUGUSTINE

RESPONDENT:

THE KERALA STATE ROAD TRANSPORT
CORPORATION, REPRESENTED BY ITS
MANAGING DIRECTOR, TRANSPORT BHAVAN,
THIRUVANANTHAPURAM

BY ADV. JOHNSON P.JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.26317/2007 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER NO.VLD2-48760/97 DTD.11/13/2/03 ISSUED BY THE EXECUTIVE DIRECTOR (VIG).**

EXT.P2: **COPY OF THE ORDER NO.D.DIS.002090/03 (APL1) DTD. 30/05/03 ISSUED BY THE RESPONDENT.**

EXT.P3: **COPY OF THE ORDER NO.D.DIS.25310/06/APL DTD. 6/11/06 ISSUED BY THE RESPONDENT.**

EXT.P4: **COPY OF THE REPRESENTATION DTD. 20/01/07 FROM THE PETITIONER TO THE RESPONDENT.**

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.26317 of 2007-

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Dated this the 16th day of November, 2007.

JUDGMENT

1. Petitioner was the driver of a KSRTC bus which was intercepted while it stopped near a sandalwood factory. He and the conductor were charge-sheeted for offences punishable under the Forest Act on the ground that certain amount of sandalwood was seen transported in the bus. It is also stated that some quantity of Indian made foreign liquor was also being transported.

2. Apart from the criminal proceedings against the petitioner and the conductor Ramanan, disciplinary proceedings were initiated and both of them were dismissed from service. The conductor filed a writ petition as WP(C). No.27984/05. That was disposed of by judgment dated 12-

4-2006 directing re-consideration of the punishment imposed by the employer KSRTC. On re-consideration, the Managing Director of KSRTC issued Ext.P3 order, whereby the dismissal of Ramanan, the conductor, was converted to be one of compulsory retirement, thereby letting him enjoy some retiral benefits. This writ petition is filed on the plea that such benefit having been extended to the conductor, the petitioner, the driver, who was the co-accused, may also be extended the same benefit.

3. After the issuance of Ext.P3, the Additional Sessions Judge, Fast Track Court-I, Palakkad has, by judgment dated 8th March, 2007, allowed the Criminal Appeals Nos.209 and 230 of 2004, filed by the petitioner and the conductor against the conviction and sentence. Having regard to the issues involved, I have gone through that judgment. It has been found by the Court of Session, among other things, that the defence version set up before the criminal court that the accused persons were not

aware of the nature of the goods and that the cartons were brought by a passenger who boarded from Salem, was acceptable. The Court of Session also noticed that the thondi articles were neither produced nor identified by the charging officer. No person, who had verified the thondi articles, was examined before the criminal court. The acquittal is, therefore, reasonable.

4. On the basis of the aforesaid acquittal, it may be a ground available to the petitioner to seek indulgence of the employer KSRTC to modify the punishment imposed before the acquittal.

5. In the light of what is aforesaid, dehors the fact that the petitioner had not challenged the disciplinary proceedings before the Tribunal, I am inclined to direct that the request of the petitioner for sympathetic consideration in view of the acquittal, has to be considered by the KSRTC.

In the result, this writ petition is disposed of directing that the Managing Director of the KSRTC will consider the request of the petitioner for re-consideration of the punishment imposed on him. The judgment of the Court of Session in Crl.A.Nos.209 and 230 of 2004 would also be taken into consideration. Let a final decision be taken within an outer limit of four months from the date of receipt of a copy of this judgment. The petitioner will be afforded an opportunity of personal hearing, if he makes a request in writing in that regard.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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